

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Mar 27, 2017**

SEAN F. McAVOY, CLERK

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**

LUIS VALDEZ,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL

SECURITY,

Defendant.

No. 1:15-CV-03151-MKD

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

ECF Nos. 14, 17

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 14, 17. The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court denies Plaintiff's motion (ECF No. 14) and grants Defendant's motion (ECF No. 17).

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND  
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 1

## JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g); 1383(c)(3).

## STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether the standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”  
2 *Id.* An error is harmless “where it is inconsequential to the [ALJ’s] ultimate  
3 nondisability determination.” *Id.* at 1115 (quotation and citation omitted). The  
4 party appealing the ALJ’s decision generally bears the burden of establishing that  
5 it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-410 (2009).

### 6 **FIVE-STEP EVALUATION PROCESS**

7 A claimant must satisfy two conditions to be considered “disabled” within  
8 the meaning of the Social Security Act. First, the claimant must be “unable to  
9 engage in any substantial gainful activity by reason of any medically determinable  
10 physical or mental impairment which can be expected to result in death or which  
11 has lasted or can be expected to last for a continuous period of not less than twelve  
12 months.” 42 U.S.C. §§ 423(d)(1)(A); 1382c(a)(3)(A). Second, the claimant’s  
13 impairment must be “of such severity that he is not only unable to do his previous  
14 work[,] but cannot, considering his age, education, and work experience, engage in  
15 any other kind of substantial gainful work which exists in the national economy.”  
16 42 U.S.C. §§ 423(d)(2)(A); 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to  
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§  
19 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner  
20 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);

1 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the  
2 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
3 404.1520(b); 416.920(b).

4 If the claimant is not engaged in substantial gainful activity, the analysis  
5 proceeds to step two. At this step, the Commissioner considers the severity of the  
6 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the  
7 claimant suffers from “any impairment or combination of impairments which  
8 significantly limits [his or her] physical or mental ability to do basic work  
9 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);  
10 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,  
11 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.  
12 §§ 404.1520(c); 416.920(c).

13 At step three, the Commissioner compares the claimant’s impairment to  
14 severe impairments recognized by the Commissioner to be so severe as to preclude  
15 a person from engaging in substantial gainful activity. 20 C.F.R. §§  
16 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more  
17 severe than one of the enumerated impairments, the Commissioner must find the  
18 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

19 If the severity of the claimant’s impairment does not meet or exceed the  
20 severity of the enumerated impairments, the Commissioner must pause to assess

1 the claimant's "residual functional capacity." Residual functional capacity (RFC),  
2 defined generally as the claimant's ability to perform physical and mental work  
3 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§  
4 404.1545(a)(1); 416.945(a)(1), is relevant to both the fourth and fifth steps of the  
5 analysis.

6 At step four, the Commissioner considers whether, in view of the claimant's  
7 RFC, the claimant is capable of performing work that he or she has performed in  
8 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv); 416.920(a)(4)(iv).  
9 If the claimant is capable of performing past relevant work, the Commissioner  
10 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f); 416.920(f).  
11 If the claimant is incapable of performing such work, the analysis proceeds to step  
12 five.

13 At step five, the Commissioner considers whether, in view of the claimant's  
14 RFC, the claimant is capable of performing other work in the national economy.  
15 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,  
16 the Commissioner must also consider vocational factors such as the claimant's age,  
17 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v);  
18 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the  
19 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
20 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other

1 work, analysis concludes with a finding that the claimant is disabled and is  
2 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1); 416.920(g)(1).

3 The claimant bears the burden of proof at steps one through four above.  
4 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to  
5 step five, the burden shifts to the Commissioner to establish that (1) the claimant is  
6 capable of performing other work; and (2) such work “exists in significant  
7 numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.920(c)(2);  
8 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

9 “A finding of ‘disabled’ under the five-step inquiry does not automatically  
10 qualify a claimant for disability benefits.” *Parra v. Astrue*, 481 F.3d 742, 746 (9th  
11 Cir. 2007) citing *Bustamante v. Massanari*, 262 F.3d 949, 954 (9th Cir. 2001)).

12 When there is medical evidence of drug or alcohol addiction, the ALJ must  
13 determine whether the drug or alcohol addiction is a material factor contributing to  
14 the disability. 20 C.F.R. §§ 404.1535(a), 416.935(a). In order to determine  
15 whether drug or alcohol addiction drug addiction is a material factor contributing  
16 to the disability, the ALJ must evaluate which of the current physical and mental  
17 limitations would remain if the claimant stopped using drugs or alcohol, then  
18 determine whether any or all of the remaining limitations would be disabling. *Id.*  
19 §§ 404.1535(b)(2), 416.935(b)(2). If the remaining limitations would not be  
20 disabling, drug or alcohol addiction is a contributing factor material to the

determination of disability. *Id.* If the remaining limitations would be disabling, the claimant is disabled independent of the drug or alcohol addiction and the addiction is not a contributing factor material to the disability determination. *Id.* Plaintiff has the burden of showing that drug and alcohol addiction (DAA) is not a contributing factor material to disability. *Parra*, 481 F.3d at 748.

### ALJ'S FINDINGS

Plaintiff applied for Title II disability insurance benefits and Title XVI supplemental security income benefits on March 16, 2009, alleging onset of disability beginning January 1, 2007. Tr. 323-32. The applications were denied initially, Tr. 163-66, and on reconsideration, 170-74. Plaintiff appeared at a hearing before an administrative law judge (ALJ) on October 7, 2013.<sup>1</sup> Tr. 100-20. On November 18, 2013, the ALJ denied Plaintiff's claim. Tr. 18-29.

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<sup>1</sup> This was the third hearing. At the first hearing February 7, 2011, Tr. 41-52, psychologist Thomas Knight, Ph.D., testified that Plaintiff should undergo psychological testing due to inconsistencies in the record. Tr. 51. The ALJ adjourned the hearing for a consultative examination, in order to perform additional testing, including an MMPI-2, Tr. 51-52, but Plaintiff failed to appear. The ALJ then dismissed Plaintiff's request for a hearing for constructive abandonment, Tr. 62, 129-30; and the Appeals Council ordered remand for another

At the outset, the ALJ found Plaintiff met the insured status requirements of the Social Security Act through December 31, 2011. Tr. 21. At step one, the ALJ found that Plaintiff has not engaged in substantial gainful activity since the alleged onset date, January 1, 2007. Tr. 21. At step two, the ALJ found that Plaintiff has the following severe impairments: degenerative disc disease, lumbar spine; diabetes; hypertension; obesity; personality disorder, not otherwise specified; psychotic disorder, not otherwise specified; and substance addiction in remission. Tr. 21. The ALJ found substance abuse addiction is not material to the non-disability determination, in part because Plaintiff has had periods of sobriety and has been able to complete a wide range of activities.<sup>2</sup> Tr. 21. At step three, the ALJ found Plaintiff does not have an impairment or combination of impairments that meets or medically equals a listed impairment. Tr. 21. The ALJ then concluded that Plaintiff has the following RFC:

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hearing. Tr. 131-33. A second hearing was conducted February 9, 2012. Tr. 55-97. The ALJ again denied Plaintiff's claim. Tr. 138-50. The Appeals Council accepted review and remanded for a third hearing. Tr. 158-62.

<sup>2</sup> The ALJ found Plaintiff is not disabled; accordingly, no further DAA materiality analysis was required. *See Parra*, 481 F.3d at 746 (an ALJ must proceed with the DAA analysis if Plaintiff is found disabled and substance abuse is indicated).



1 [T]he claimant has the residual functional capacity to perform medium work  
2 as defined in [the regulations], including: He can lift occasionally 50 pounds,  
3 and frequently lift/carry 25 pounds; can sit, stand/walk for at least six hours  
4 of an 8 hour workday with usual breaks; he has an unlimited ability to push  
5 and/or pull, including operation of hand and foot controls within his limits  
6 for lifting and carrying; can frequently climb ramps and stairs; can  
7 occasionally climb ladders, ropes and/or scaffolding; can frequently balance  
8 and kneel; can occasionally stoop; can frequently kneel, crouch, and crawl;  
should avoid working with hazardous machinery or at unprotected heights;  
can understand, remember and carry out simple instructions as jobs  
classified as SVP level 1 or 2/unskilled work; can make judgments on  
simple, work-related decisions; can respond appropriately to supervision and  
co-workers, and deal with occasional changes in his work environment that  
requires only occasional exposure to or interaction with the general public.

Tr. 24.

At step four, the ALJ found that Plaintiff has no past relevant work. Tr. 27.

At step five, the ALJ found that, considering Plaintiff's age education, work  
experience, RFC, and the vocational expert's testimony, there are jobs in  
significant numbers in the national economy that Plaintiff could perform, such as  
laundry sorter, hand packager, and machine feeder. Tr. 28. On that basis, the ALJ  
concluded that Plaintiff is not disabled as defined in the Social Security Act. Tr.  
28-29.

On June 29, 2015, the Appeals Council denied review, Tr. 1-4, making the  
ALJ's decision the Commissioner's final decision for purposes of judicial review.  
*See* 42 U.S.C. § 1383 (c)(3); 20 C.F.R. §§ 416.1481, 422.210.

## ISSUES

Plaintiff seeks judicial review of the Commissioner's final decision denying him disability insurance benefits under Title II and supplemental security income benefits under Title XVI of the Social Security Act. ECF No. 14. Plaintiff raises the following issues for this Court's review:

1. Whether the ALJ properly weighed the medical evidence; and
2. Whether the ALJ properly discredited Plaintiff's symptoms claims.

ECF No. 14 at 6.

## DISCUSSION

### A. Medical Opinion Evidence

Plaintiff faults the ALJ for discrediting the medical opinions of (1) treating psychiatrist Philip Rodenberger, M.D.; (2) seven "non-acceptable [treating] medical sources"; and (3) examining psychologist Tae-Im Moon, Ph.D. ECF No. 14 at 6-17.

There are three types of physicians: "(1) those who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant (examining physicians); and (3) those who neither examine nor treat the claimant but who review the claimant's file (nonexamining or reviewing physicians)." *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (brackets omitted). "Generally, a treating physician's opinion carries more weight than an examining

1 physician's, and an examining physician's opinion carries more weight than a  
2 reviewing physician's." *Id.* "In addition, the regulations give more weight to  
3 opinions that are explained than to those that are not, and to the opinions of  
4 specialists concerning matters relating to their specialty over that of  
5 nonspecialists." *Id.* (citations omitted).

6 If a treating or examining physician's opinion is uncontradicted, an ALJ may  
7 reject it only by offering "clear and convincing reasons that are supported by  
8 substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).  
9 "However, the ALJ need not accept the opinion of any physician, including a  
10 treating physician, if that opinion is brief, conclusory and inadequately supported  
11 by clinical findings." *Bray v. Comm'r of Soc. Sec. Admin*, 554 F.3d 1219, 1228  
12 (9th Cir. 2009) (internal quotation marks and brackets omitted). "If a treating or  
13 examining doctor's opinion is contradicted by another doctor's opinion, an ALJ  
14 may only reject it by providing specific and legitimate reasons that are supported  
15 by substantial evidence." *Bayliss*, 427 F.3d at 1216 (citing *Lester v. Chater*, 81  
16 F.3d 821, 830-31(9th Cir. 1995)).

17 The opinion of an acceptable medical source such as a physician or  
18 psychologist is given more weight than that of an "other source." *See* SSR 06-03p  
19 (Aug. 9, 2006), *available at* 2006 WL 2329939 at \*2; 20 C.F.R. § 416.927(a).  
20 "Other sources" include nurse practitioners, physician assistants, therapists,

1 teachers, social workers, and other non-medical sources. 20 C.F.R. §§  
2 404.1513(d), 416.913(d). The ALJ need only provide “germane reasons” for  
3 disregarding an “other source” opinion. *Molina*, 674 F.3d at 1111. However, the  
4 ALJ is required to “consider observations by nonmedical sources as to how an  
5 impairment affects a claimant’s ability to work.” *Sprague v. Bowen*, 812 F.2d  
6 1226, 1232 (9th Cir. 1987).

7 *1. Dr. Rodenberger*

8 Plaintiff faults the ALJ for failing to credit the January 2010 opinion of  
9 treating psychiatrist Philip Rodenberger, M.D. ECF No. 14 at 6-10. Dr.  
10 Rodenberger opined that, even without substance abuse, Plaintiff was severely  
11 limited in thirteen areas of functioning. Tr. 7111-13. The ALJ gave this opinion  
12 little weight. Tr. 26. Because Dr. Rodenberger’s opinion was controverted, in  
13 part, by examining psychologist Roland Dougherty, Ph.D., Tr. 630-35, the ALJ  
14 must provide specific and legitimate reasons that are supported by substantial  
15 evidence to reject it. *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-831).  
16 This Court finds the ALJ provided specific and legitimate reasons.

17 *a. Unsupported by the record - treating source*

18 First, the ALJ found that Dr. Rodenberger’s opinion conflicts with the  
19 record. Tr. 26. Relevant factors to evaluating any medical opinion include the  
20 amount of relevant evidence that supports the opinion, the quality of the

1 explanation provided in the opinion, and the consistency of the medical opinion  
2 with the record as a whole. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1042 (9th Cir.  
3 2007); *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). An ALJ may discredit a  
4 treating physician's opinions that are unsupported by the record as a whole or by  
5 objective findings. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195  
6 (9th Cir. 2004). The record supports the ALJ's reasoning. For example, the ALJ  
7 found that GAF scores of 55-65<sup>3</sup> (indicating moderate to mild symptoms or  
8 limitations), by several other treating and examining sources are generally more  
9 credible, and more consistent with the record overall, than Dr. Rodenberger's 2010  
10 opinion. The ALJ found, for instance, that in March 2008, treatment provider  
11 Suzanne Rodriguez, MSW, assessed a GAF of 60, reflecting only moderate  
12 symptoms or impairments. Tr. 26 (citing Tr. 489). The ALJ also found that, at this  
13 appointment, Plaintiff told Ms. Rodriguez he was able to manage his ongoing

14 \_\_\_\_\_  
15 <sup>3</sup> A Global assessment of Functioning of 55 indicates moderate symptoms or  
16 limitations, while a GAF of 65 indicates mild symptoms or some difficulty in  
17 social, occupational, or school functioning ... but generally functioning pretty well,  
18 has some meaningful interpersonal relationships. American Psychiatric Ass'n,  
19 *Diagnostic and Statistical Manual of Mental Disorders* (4th ed., Text Revision  
20 2000) (DSM-IV-TR) at 34.

1 auditory hallucinations,<sup>4</sup> and, although he experienced occasional mild depression,  
2 he further reported that prescribed medication had decreased his depressive  
3 symptoms. Tr. 26 (citing Tr. 489). As another example, the ALJ found that a  
4 month later, in April 2008, Plaintiff told Ms. Rodriguez that he managed auditory  
5 hallucinations “by simply ignoring them,” and specifically denied symptoms of  
6 depression or anxiety. Tr. 26 (referring to Tr. 486). At the same appointment,  
7 Plaintiff further reported that he knew that the voices he hears are not real and that  
8 is “why I can control them.” Tr. 486. Ms. Rodriguez assessed a GAF of 65,  
9 indicating only mild symptoms or limitations. Tr. 26 (citing Tr. 486). The ALJ is  
10 correct that these records are inconsistent with Dr. Rodenberger’s opinion, i.e., that  
11 Plaintiff has marked mental health limitations, including a GAF as low as 50.<sup>5</sup> Tr.  
12 26 (citing Tr. 562). The ALJ found Dr. Rodenberger’s opinion was entitled to little

13 \_\_\_\_\_  
14 <sup>4</sup> Plaintiff alleges he suffers auditory hallucinations. In June 2009, he told  
15 examining psychologist Dr. Dougherty that these hallucinations began when he  
16 drank and took drugs. Tr. 26 (citing Tr. 631). At the same time, Plaintiff reported  
17 that he began hallucinating when he took methamphetamine. Tr. 632. Plaintiff has  
18 reported that this began in 2001. Tr. 1502.

19 <sup>5</sup> A GAF score of 50 indicates serious symptoms or any serious impairment in  
20 social, occupational, or school functioning. *DSM-IV-TR*, 34.

1 weight because it “conflicts with the comprehensive record as outlined above.” Tr.  
2 26 (citing, in part, Ms. Rodriguez’s records at Tr. 486). The ALJ further found Dr.  
3 Rodenberger opined that, given Plaintiff’s history of drug use, it was difficult to  
4 “distinguish schizophrenia from drug-induced psychosis.” Tr. 26; *see* Tr. 562 (at  
5 Plaintiff’s first appointment with Dr. Rodenberger, in November 2007, Plaintiff  
6 reported that he heard voices<sup>6</sup>). Because the record is replete with evidence of  
7 substance use, and Dr. Rodenberger consistently pondered about the effects, the  
8 ALJ properly considered the possibility that some of the limitations Dr.  
9 Rodenberger assessed were caused by substance abuse rather than mental  
10 impairments.<sup>7</sup>

11 \_\_\_\_\_  
12 <sup>6</sup> At this appointment, Dr. Rodenberger also noted that Plaintiff was alert, oriented,  
13 and cooperative; speech was coherent and goal directed; and affect was “a bit  
14 constricted but not unpleasant.” Tr. 562.

15 <sup>7</sup> *See, e.g.* Tr. 526 (in May 2008, Donald Hill, M.D., opined Plaintiff’s that diabetes  
16 was exacerbated by a recent alcohol binge); Tr. 564 (in July 2008, Plaintiff told Dr.  
17 Rodenberger that he had relapsed on alcohol in March 2008); Tr. 466 (in October  
18 2008, Plaintiff reported that he drank whiskey two days ago; testing for  
19 cannabinoids returned positive); Tr. 887 (in September 2009, Plaintiff was  
20 hospitalized for three days after drinking alcohol); Tr. 1413 (in January 2011, Mr.

1 Dr. Rodenberger's January 2010 opinion is inconsistent,<sup>8</sup> when he assessed  
2 thirteen severe limitations,<sup>9</sup> with his February 2009 treatment notes indicating  
3  
4

5 Moen noted current substance abuse); Tr. 1478 (in June 2011, Plaintiff denied drug  
6 use but tested positive for methamphetamine, cocaine, and cannabinoids); Tr.  
7 1804-05 (in January 2012, Plaintiff denied drug use, but tested positive for  
8 cannabinoids and methamphetamine). The ALJ noted that in October 2012,  
9 Plaintiff tested positive for methamphetamine, Tr. 21 (citing Tr. 1914), and was  
10 terminated from treatment. Tr. 1917. At the current hearing, Plaintiff testified that  
11 he relapsed a month earlier, in September 2013, when he used marijuana and  
12 methamphetamine. Tr. 104-05.

13 <sup>8</sup> Plaintiff did not see Dr. Rodenberger from July 2009 until January 2010. Tr. 763.  
14 At the latter appointment in 2010, Dr. Rodenberger remarked that, compared with  
15 July 2009, he saw "a fairly remarkable improvement"; he opined perhaps this was  
16 due to Plaintiff "taking the medication more reliably" and remaining "clean with  
17 respect to his past polysubstance abuse." Tr. 793. At the prior appointment in  
18 July, Plaintiff had rated his functioning at 20/100; however, Dr. Rodenberger  
19 observed that due to an error, the pharmacy had not filled two of Plaintiff's  
20 medications. Tr. 666 (referring to Tr. 794).



1 Plaintiff reported that he was doing better and rated his own functioning at 90/100.  
2 Tr. 26; Tr. 559. Because an ALJ may discount an opinion that is brief, conclusory,  
3 and inadequately supported by clinical findings, *Bray*, 554 F.3d 1219, 1228 (9th  
4 Cir. 2009), or is inconsistent with a claimant's reported functioning, *Morgan v.*  
5 *Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 601-602 (9th Cir. 1999), the ALJ  
6 provided specific reasons for giving Dr. Rodenberger's opinion limited weight.

7 *b. Unsupported by the record - examining source*

8 Next, the ALJ rejected Dr. Rodenberger's opinion because it was  
9 inconsistent with the opinion of examining psychologist Roland Dougherty, Ph.D.,  
10

11 <sup>9</sup> As noted *infra* with respect to the ALJ's credibility assessment, Dr. Rodenberger  
12 assessed, for example, a marked limitation in the ability to use public  
13 transportation, but this is contradicted by Plaintiff's admitted ability to use public  
14 transportation. Tr. 25-26; *compare* Tr. 713 (in January 2010, Dr. Rodenberger  
15 opined Plaintiff was *markedly* limited in the ability to travel in unfamiliar places or  
16 use public transportation) *with* Tr. 387-88 (in April 2009, Plaintiff reported that he  
17 used public transportation to go to the library, appointments, and other places as  
18 needed). Because Plaintiff's functioning was inconsistent with Dr. Rodenberger's  
19 assessed limitations, the ALJ provided another specific, legitimate reason for  
20 affording his opinion limited weight.

1 who assessed only mild symptoms. Tr. 26 (citing Tr. 635) (assessing a GAF 65).

2 An opinion that is consistent with the record overall is entitled to greater weight

3 than one that is inconsistent. *See Orn*, 495 F.3d at 631 (“factors relevant to

4 weighing any medical opinion include the amount of relevant evidence that

5 supports the opinion and the quality of the explanation provided; the consistency of

6 the medical opinion with the record as a whole”) (citation omitted).

7 The ALJ found that in June 2009, as noted, Dr. Dougherty assessed a GAF

8 of 65, indicating only mild symptoms or limitations (Tr. 635), as had treatment

9 provider Ms. Rodriguez in April 2008. Tr. 26 (citing Tr. 486). In addition, Dr.

10 Dougherty noted that Plaintiff described himself as functioning well in nearly

11 every area of his life; the only exception was brief, intermittent depressive

12 episodes. Tr. 26 (citing Tr. 635). Further, Plaintiff reported that he took part in

13 physical activities, helped around the house, and walked for long distances. Tr. 26

14 (citing Tr. 635). Dr. Dougherty opined that Plaintiff’s thinking was logical and

15 goal directed; moreover, Plaintiff responded rationally to Dr. Dougherty’s

16 questions. *Id.* Plaintiff’s social skills appeared at least fair; Dr. Dougherty opined

17 that Plaintiff “socializes easily.” Tr. 26 (citing Tr. 635). The ALJ also found, as

18 another example, that although Plaintiff had complained of poor concentration (Tr.

19 110, 112, 583), he told Dr. Dougherty that he watched television and played video

20 games for long periods of time, with good concentration, and read the newspaper

1 daily for thirty minutes. Tr. 26 (citing Tr. 634-35). These activities are clearly  
2 consistent with mild rather than severe limitations. Most significantly, the ALJ  
3 found Dr. Dougherty opined that Plaintiff's "reported hallucinations do not appear  
4 to interfere with his activities." Tr. 25 (citing Tr. 630, 633, 635). Dr. Dougherty  
5 based this opinion on Plaintiff's report that audio hallucinations began in 2001, Tr.  
6 630; yet Plaintiff told Dr. Dougherty that he was able to work without difficulty as  
7 a child care provider for years<sup>10</sup> thereafter. Tr. 633. The ALJ properly gave Dr.  
8 Dougherty's opinion greater weight because, unlike Dr. Rodenberger's, it was both  
9 supported with clinical findings and consistent with Plaintiff actual functioning.  
10 *See, e.g.*, Tr. 633 (Dr. Dougherty performed a MSE that yielded essentially normal  
11 results); Tr. 630 (Plaintiff told Dr. Dougherty that his hallucinatory symptoms had  
12 not prevented him from working). Because the ALJ may discount an opinion that  
13 is unsupported by clinical findings or is inconsistent with the record as a whole,  
14 *Batson*, 359 F.3d at 1195, and may discount an opinion that is inconsistent with a  
15 claimant's reported functioning, *Morgan*, 169 F.3d at 601-602, the ALJ provided  
16 additional specific and legitimate reasons for affording Dr. Rodenberger's opinion  
17 limited weight.

18 \_\_\_\_\_  
19 <sup>10</sup> Plaintiff told Dr. Moon that he worked as a child care provider from 1996-2006,  
20 and this job ended when his employer moved. Tr. 1718.

1           3. *Unsupported by the record - reviewing sources*

2           Third, the ALJ found that the opinions of reviewing sources, unlike Dr.  
3 Rodenberger's, were consistent with the records of other treating and examining  
4 sources, and with Plaintiff's activities. Tr. 26. While the contrary opinion of a  
5 non-examining medical expert does not alone constitute a specific, legitimate  
6 reason for rejecting a treating or examining physician's opinion, it may constitute  
7 substantial evidence when it is consistent with other independent evidence in the  
8 record. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (citing  
9 *Magallanes v. Bowen*, 881 F.2d 747, 752 (9th Cir. 1989)). For example, the ALJ  
10 found Mary Gentile, Ph.D., reviewed the record in June 2009, and opined that  
11 Plaintiff was cognitively intact and capable of simple and well-learned tasks. Tr.  
12 26 (citing Tr. 636-49, 650-53). In September 2009, Edward Beaty, Ph.D.,  
13 reviewed the record and agreed with Dr. Gentile's opinion. Tr. 709. The ALJ  
14 found, for example, that the reviewing psychologists' opinions of Plaintiff's  
15 functioning are consistent with his reported activities, *i.e.*, Plaintiff reported that he  
16 handled money adequately; used public transportation; shopped; regularly went to  
17 the library, post office and park; played video and card games; played light, non-  
18 contact sports; read the newspaper; and maintained a relationship with his  
19 girlfriend. Tr. 25 (citing Tr. 386-90); *see also* Tr. 632 (Plaintiff told Dr. Dougherty  
20 he has been with his girlfriend for seventeen years). This range of activities

1 indicates no more than mild limitations and refutes D. Rodenberger's opinion.  
2 Because the reviewing psychologists' opinions are consistent with other  
3 independent evidence, including the opinions of Dr. Dougherty and Ms.  
4 Rodriguez, and with Plaintiff's reported activities, the ALJ provided another  
5 legitimate and specific reason for giving Dr. Rodenberger's opinion less weight.  
6

7 *4. Lack of supporting evidence*

8 The ALJ further found that Dr. Rodenberger did not cite to specific,  
9 objective findings to support his opinion. Tr. 25-26. An ALJ may discredit a  
10 treating physician's opinions that are unsupported by the record as a whole or by  
11 objective medical findings. *Batson*, 359 F.3d at 1195. Here, contrary to Dr.  
12 Rodenberger's assessed severe and marked limitations, the ALJ noted test results,  
13 such as MSEs, have largely been normal. Tr. 26. For example, in October 2007,  
14 treatment provider David Hibbs, ARNP, reported that Plaintiff was alert, oriented,  
15 and there was no unusual anxiety or evidence of depression. Tr. 26 (citing Tr.  
16 552); *see also* Tr. 524 (in August 2008, Mr. Hibbs again reported Plaintiff was  
17 alert and oriented). As another example, in April through June 2008, treatment  
18 provider Ms. Rodriguez opined Plaintiff was oriented "times 3"; his thoughts were  
19 concrete and organized; and, among other good test results, Plaintiff completed a  
20 3-step command easily. Tr. 26 (citing Tr. 482, 484, 599). As a further example, in

1 June 2009, Dr. Dougherty noted that Plaintiff's MSE results were essentially  
2 normal. Tr. 26 (citing Tr. 633).<sup>11</sup> Because an ALJ may give less weight to  
3 opinions that are inadequately supported by clinical findings, *Bray*, 554 F.3d at  
4 1228, the ALJ provided another specific reason for giving Dr. Rodenberger's  
5 opinion less weight.

6 Last, the ALJ gave Dr. Rodenberger's opinion little weight because he "uses  
7 vague phrases" to describe Plaintiff's condition, such as "I consider him to be  
8 stably unstable." Tr. 26 (citing Tr. 559). An ALJ need not accept the opinion of  
9 any physician, including a treating physician, if that opinion is brief, conclusory,  
10 and inadequately supported by clinical findings. *Bray*, 554 F. 3d at 1228. As  
11 noted, the ALJ relied on largely normal MSE results, Plaintiff's functioning as  
12 assessed by Dr. Dougherty and Ms. Rodriguez, the opinions of reviewing  
13 psychologists Dr. Gentile and Dr. Beaty, as well as Plaintiff's own reported  
14 inconsistent activities, when he gave Dr. Rodenberger's dire opinion limited  
15 weight. Tr. 25-26. Regardless of whether Dr. Rodenberger's use of the phrase  
16 "stably unstable" was vague, the Court finds that the ALJ's analysis is based on

17 \_\_\_\_\_  
18 <sup>11</sup> See also Tr. 774 (in December 2010, treating physician Phillip Dove, M.D.,  
19 opined Plaintiff was alert and oriented. No unusual anxiety or evidence of  
20 depression were noted).

1 several specific, legitimate reasons supported by the record. Given all of the fully  
2 supported reasons for rejecting Dr. Rodenberger's opinion, the Court finds any  
3 error by the ALJ in relying on perceived "vagueness" is harmless. *See Tommasetti*  
4 *v. Astrue*, 533 F.3d 1035, 1043 (9th Cir. 2008) (error that is inconsequential to the  
5 ultimate nondisability determination is harmless error) (internal citations omitted).  
6

## 7 2. DSHS Opinions

8 Plaintiff faults the ALJ's assessment of the evidence of mental limitations  
9 offered by five treating "other sources," as well as the opinion of an examining  
10 psychologist, Tae-Im Moon, Ph.D. ECF No. 14 at 10-13. An ALJ must only  
11 provide germane reasons for rejecting the opinion of an "other source." SSR 06-  
12 03p, 2006 WL 2329939 at \*2, *Molina*, 674 F.3d at 1111.

### 13 a. Russell Anderson, LCSW

14 On September 23, 2008, treatment provider Russell Anderson, LICSW,  
15 evaluated Plaintiff. Tr. 583-588. He diagnosed psychotic disorder, not otherwise  
16 specified, and depressive disorder, not otherwise specified. Tr. 26 (citing Tr. 586).  
17 Mr. Anderson opined that Plaintiff has a marked mental limitation (hallucinations)  
18 and ten moderate mental limitations. Tr. 26 (citing Tr. 586-87). The ALJ gave this  
19 opinion very little weight. Tr. 26.  
20

1 The ALJ found that Mr. Anderson's opinion was inconsistent with the  
2 record. Tr. 26 (citing Tr. 584). Because the ALJ may discount an opinion that is  
3 conclusory, brief, and unsupported by the record as a whole, or by objective  
4 medical findings, *Batson*, 359 F.3d at 1195, this is a germane reason. For example,  
5 the ALJ found Mr. Anderson's September 2008 opinion, that Plaintiff suffers from  
6 "marked" mental limitations due to hallucinations, Tr. 584, was contradicted by the  
7 "longitudinal record," which includes Dr. Dougherty's 2009 evaluation. An ALJ  
8 may properly give greater deference to the opinion of an acceptable source than to  
9 an "other source." *Molina*, 674 F.3d at 1111 (citing *Valentine v. Comm'r of Soc.*  
10 *Sec. Admin.*, 574 F. 3d 685, 692 (9th Cir. 2009). Here, contrary to Mr. Anderson's  
11 opinion, the ALJ found Dr. Dougherty opined that Plaintiff's "reported  
12 hallucinations do not appear to interfere with his activities." Tr. 26 (citing Tr.  
13 635). This was a germane reason.

14 The ALJ next found that Mr. Anderson's opinion "conflicts with the  
15 comprehensive record," Tr. 26, because it is inconsistent with Plaintiff's reported  
16 functioning. Tr. 25 (citing Tr. 384-390). An ALJ may discount an opinion that is  
17 inconsistent with a claimant's reported functioning. *Morgan*, 169 F.3d at 601-602.  
18 The ALJ found that while Mr. Anderson opined Plaintiff suffered hallucinations to  
19 a "marked" degree, Tr. 584, and Plaintiff complained that he heard voices and  
20 responded to external stimuli, Tr. 585, Plaintiff also reported that he lived in a



1 shelter with others; frequently went outside; used public transportation; shopped in  
2 stores; visited the post office, library, park, and doctors regularly; got along well  
3 with others; handled stress very well; and had a girlfriend. Tr. 25 (citing Tr. 384-  
4 391); *see also* Tr. 634 (Plaintiff told Dr. Dougherty he read the newspaper every  
5 day for thirty minutes). This wide range of activities is inconsistent with Mr.  
6 Anderson's much more limiting assessment.

7 Plaintiff contends the ALJ relied on Mr. Anderson's status as a non-  
8 acceptable source as a reason to discredit his opinion, as well as to discredit the  
9 opinions of the other non-acceptable sources (Mr. Clark, Ms. Gray, Mr. Moen, and  
10 Ms. Vaagen (mental limitations) and Ms. Campbell, Ms. Rutter, and Ms. Spitler  
11 (physical limitations). ECF No. 10-12, citing Tr. 26. However, because an ALJ  
12 may properly give greater deference to the opinions of "acceptable" sources than to  
13 "other sources," *see Molina*, 674 F.3d at 1111, the ALJ did not err. The ALJ  
14 provided germane reasons for rejecting Mr. Anderson's, and others' opinions.

15 *b. Christopher Clark, M.Ed.*

16 Treatment provider Christopher Clark, M.Ed., evaluated Plaintiff in March  
17 2008 and February 2009. Tr. 577-82; 589-94. In his first opinion, Mr. Clark  
18 diagnosed psychosis, not otherwise specified; somatoform disorder, not otherwise  
19 specified; and rule out schizophrenia, paranoid type. Tr. 578. In addition, Mr.  
20 Clark assessed multiple marked and moderate limitations, and opined that

1 Plaintiff's prognosis was poor. Tr. 578-80. The ALJ gave this opinion very little  
2 weight. Tr. 26 (citing Tr. 578-79).

3 Mr. Clark evaluated Plaintiff again in February 2009. Tr. 589-94. Mr. Clark  
4 changed his diagnoses to schizoaffective disorder, depressed type; polysubstance  
5 dependence, in sustained remission; and rule out schizophrenia, undifferentiated  
6 type. Tr. 590. Mr. Clark again assessed several marked and moderate mental  
7 limitations. Tr. 590-91. Mr. Clark further opined that Plaintiff's employability  
8 factors had not improved. Tr. 592. The ALJ also gave this opinion very little  
9 weight. Tr. 26 (citing Tr. 592).

10 The ALJ essentially rejected Mr. Clark's opinion, finding that other  
11 longitudinal records refuted the presence of such marked limitations. Tr. 26. An  
12 ALJ may discredit an opinion that is brief, conclusory, and unsupported by the  
13 record as a whole, or by objective findings. *Batson*, 359 F.3d at 1195. As  
14 previously noted, the longitudinal record the ALJ relied on included, in part, the  
15 opinions of examining psychologist Dr. Dougherty and treatment provider Suzanne  
16 Rodriguez, MSW. Tr. 26 (citing Tr. 486) (in April 2008, Plaintiff told Ms.  
17 Rodriguez that he managed the voices by ignoring them; she assessed a GAF of  
18 65); (in June 2009, examining psychologist Dr. Dougherty also assessed a GAF of  
19 65, indicating only mild mental health limitations; he also noted Plaintiff was able  
20 to work in the past despite hearing voices). Because the ALJ may properly credit

1 an acceptable source over an “other source,” *Molina*, 674 F.3d at 1111, the ALJ’s  
2 reason is germane.

3 *c. Jody Gray, ARNP*

4 In January 2012, Ms. Gray opined that Plaintiff may need to miss three or  
5 more days of work per month due to “lower back pain and psychosis.” Tr. 1689.  
6 The ALJ gave Ms. Gray’s opinion as to Plaintiff’s mental limitations very little  
7 weight, Tr. 26, because it conflicted with the opinion by an acceptable source,  
8 examining psychologist Dr. Dougherty (Tr. 630-35, who noted Plaintiff had been  
9 able to work despite allegedly hearing voices), reviewing psychologists Dr. Gentile  
10 (Tr. 636-52) and Dr. Beaty (Tr. 652, 709, who opined Plaintiff is cognitively intact,  
11 capable of simple and well-learned complex tasks, and able to have superficial  
12 public and co-worker contact), and by treating source Ms. Rodriguez. Tr. 486. As  
13 noted, Ms. Rodriguez assessed a GAF of 65 in April 2008 and found Plaintiff  
14 admitted that he knows the voices he hears are not real, and he is able to control  
15 them by ignoring them. Tr. 486. Because an ALJ may properly give greater credit  
16 to acceptable medical source opinions than to “other source” opinions, *Molina*, 674  
17 F.3d at 1111, and to opinions that are consistent with the record as a whole,  
18 *Batson*, 359 F.3d at 1195, the ALJ’s reasons for rejecting Ms. Gray’s more extreme  
19 limitations are germane.

20 *d. Dick Moen, MSW*

1 In October 2007, treatment provider Mr. Moen evaluated Plaintiff. Tr. 569-  
2 75. Mr. Moen diagnosed drug-induced psychotic disorder with hallucinations (by  
3 history); amphetamine and cannabis dependence; and psychotic disorder not  
4 otherwise specified. Tr. 570. Mr. Moen assessed six marked and two moderate  
5 mental limitations. Tr. 570-71. The ALJ rejected this opinion. Tr. 26.

6 In January 2011, Mr. Moen again evaluated Plaintiff. Tr. 1411-17; *repeated*  
7 *at* Tr. 1624-30. Mr. Moen again assessed numerous marked mental limitations.  
8 Tr. 1412-13. The ALJ also rejected this opinion. Tr. 26. The ALJ rejected these  
9 opinions, that Plaintiff suffered marked mental health limitations, because the ALJ  
10 found these assessments conflicted with the longitudinal record as a whole. Tr. 26.  
11 An ALJ may discredit an opinion that is unsupported by the record as a whole.  
12 *Batson*, 359 F.3d at 1195. The longitudinal record the ALJ relied on, as noted,  
13 included in part the opinions of examining psychologist Dr. Dougherty (Tr. 630-  
14 63, who noted Plaintiff had been able to work despite allegedly hearing voices),  
15 reviewing psychologist Dr. Gentile (Tr. 636-52), who opined Plaintiff is  
16 cognitively intact, capable of simple and well-learned complex tasks, and able to  
17 have superficial public and coworker contact, and reviewing psychologist Dr.  
18 Beaty, who agreed with her opinion (Tr. 709), and treatment provider Ms.  
19 Rodriguez. Tr. 486. As indicated, in April 2008 Ms. Rodriguez found Plaintiff

1 admitted that he knew the voices were not real and he could control them by  
2 ignoring them. Tr. 486. The ALJ's reason was germane.

3 The ALJ additionally rejected Mr. Moen's opinions because he is an "other  
4 source," and the ALJ gave greater credit to the opinions of acceptable sources,  
5 including examining psychologist Dr. Dougherty. Tr. 26. Because an ALJ may  
6 properly give greater credit to acceptable medical source opinions than to "other  
7 source" opinions, *Molina*, 674 F.3d at 1111, the ALJ's reason again is germane.

8 *e. Lindsey Vaagen, MSW*

9 In February 2010, treatment provider Ms. Vaagen evaluated Plaintiff. Tr.  
10 719-726; *repeated at* Tr. 1631-1638. She diagnosed psychotic disorder, not  
11 otherwise specified, and cannabis abuse. Tr. 721. Ms. Vaagen assessed two  
12 marked and four moderate mental limitations. Tr. 722. The ALJ gave this  
13 opinion "very little weight." Tr. 26

14 The ALJ rejected Ms. Vaagen's opinion, that Plaintiff had marked mental  
15 health limitations, because the ALJ again found this assessment conflicts with the  
16 longitudinal record as a whole. *See, e.g.*, Tr. 26 (citing Tr. 572) (Mr. Moen opined  
17 Plaintiff had six marked limitations); Tr. 722 (Ms. Vaagen opined that Plaintiff had  
18 two marked limitations, in the ability to interact appropriately with the public, and  
19 respond appropriately to normal workplace pressures). An ALJ may reject  
20 opinions that are conclusory, brief, and unsupported by the record as a whole, or by

1 objective medical findings. *Batson*, 359 F.3d at 1195. The ALJ rejected this  
2 opinion based on, as noted, the better supported opinions of consultative examiner  
3 Dr. Dougherty, an acceptable medical source (Tr. 630-35<sup>12</sup>), and reviewing  
4 psychologists Mary Gentile, Ph.D. (Tr. 636-53) and Edward Beaty, Ph.D. (Tr.  
5 709). The ALJ further relied on the records of other treatment providers. For  
6 example, the ALJ observed that in October 2007, about ten months after onset,  
7 provider David Hibbs, ARNP, opined Plaintiff did not exhibit any unusual anxiety  
8 or evidence of depression. Tr. 25 (citing Tr. 552). As another example, as noted,  
9 in May 2008, treatment provider Ms. Rodriguez opined that Plaintiff's speech was  
10 coherent and spontaneous; thoughts were concrete and organized; and, with respect  
11 to auditory hallucinations, Plaintiff reported "I try to manage them and know they

12 \_\_\_\_\_  
13 <sup>12</sup> Dr. Dougherty, for example, noted Plaintiff was dressed neatly and appropriately;  
14 there was no evidence of psychomotor agitation; Plaintiff was cooperative; and  
15 mood and affect were positive. Tr. 25 (citing Tr. 633). Plaintiff recalled three  
16 objects after five minutes; completed serial seven testing without error; completed  
17 a 3-step command easily; had no difficulty following a conversation; and gave  
18 appropriate, abstract explanations for common proverbs. Tr. 25 (citing Tr. 633).  
19 The ALJ correctly found that Dr. Dougherty's thorough examination results are  
20 inconsistent with the extreme limitations assessed by Mr. Moen.

1 are not real.” Tr. 25 (citing Tr. 599). Additionally, in June 2008, Ms. Rodriguez  
2 opined Plaintiff was “alert and oriented x3.” Tr. 25 (citing Tr. 482). The ALJ is  
3 correct that these records do not support the more dire limitations assessed by Mr.  
4 Moen in 2007 nor Ms. Vaagen in 2010. Similarly, as noted, in January 2011, Mr.  
5 Moen<sup>13</sup> again assessed numerous marked limitations. Tr. 26 (citing Tr. 1412-13)  
6 (opining, in part, that Plaintiff was markedly limited in the ability understand and  
7 remember simple tasks). By contrast, Dr. Dougherty, an acceptable examining  
8 source, opined that Plaintiff was able to carry out a three-step command with ease.  
9 Tr. 633.<sup>14</sup> This was a germane reason to reject the opinions.

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10  
11 <sup>13</sup> This opinion was not co-authored by Dr. Rodenberger, as Plaintiff contends.  
12 ECF No. 14 at 13. Rather, Dr. Rodenberger merely signed as a “Releasing  
13 Authority Signature/Title (For Use by the Veteran’s Administration) or Area of  
14 Advanced Training for ARNP.” Tr. 1415.

15 <sup>14</sup> The ALJ references Dr. Dougherty’s opinion generally, Tr. 26, but the Court cites  
16 specific portions of his opinion where applicable. While the ALJ may not have  
17 recited the magic words “I reject this opinion because . . .”, such an incantation is  
18 not required. *Magallanes*, 881 F.2d at 755. As a reviewing court, we are not  
19 deprived of our faculties for drawing specific and legitimate inferences from the  
20 ALJ’s opinion. *Id.*

1 *f. Dr. Moon*

2 In March 2012 Dr. Moon examined Plaintiff, Tr. 1717-20, and assessed a  
 3 GAF of 40.<sup>15</sup> Tr. 1717-20. Dr. Moon opined that Plaintiff had concentration  
 4 problems, which she described as having a “hard time sustaining focus due to  
 5 voices”; and Dr. Moon believed that a protective payee should be appointed. Tr.  
 6 1717-18. The ALJ gave this opinion little weight. (Tr. 26). Because Dr. Moon’s  
 7 opinion was contradicted by Dr. Dougherty, Tr. 630-635, the ALJ was required to  
 8 provide specific and legitimate reason for rejecting it. *Bayliss*, 427 F.3d at 1216.

9 First, the ALJ found there was no indication that Dr. Moon reviewed any  
 10 records, other than other DSHS reports. Tr. 26 (citing Tr. 1717-20). “The extent  
 11 to which a medical source is ‘familiar with the other information in [the  
 12 claimant’s] case record’ is relevant in assessing the weight of that source’s medical  
 13 opinion, *see* 20 C.F.R. §§ 404.1527(c)(6); 416.927(c)(6); however, it is but one  
 14 factor the ALJ can consider in weighing a medical opinion. *See* 20 C.F.R. §§

15 \_\_\_\_\_  
 16 <sup>15</sup> A GAF of 40 indicates “some impairment in reality testing or communication  
 17 (e.g., speech is at times illogical, obscure, or irrelevant) OR major impairment in  
 18 several areas, such as work or school, family relations, judgment, thinking, or  
 19 mood (e.g., depressed man avoids friends, neglects family, and is unable to  
 20 work . . .).” *DSM-IV-TR*, 34.



1 404.1527(c), 416.927(c); *see also Boghossian v. Astrue*, No. CV 10-7782-SP, 2011  
2 WL 5520391, at \*4 (C.D. Cal. Nov. 14, 2011) (stating that a limited review of the  
3 record is not sufficient by itself to reject a treating physician's opinion." *Cox v.*  
4 *Colvin*, No. 15-CV-00190, 2015 WL 8596436 at \*13 (N.D. Cal. Dec. 14, 2015).

5 Dr. Moon's report indicates Plaintiff provided background information. Tr.  
6 1718. The ALJ properly considered Dr. Moon's lack of familiarity with the rest of  
7 the record when she weighed the opinion, because it was a relevant consideration  
8 but not the sole reason.

9 Second, the ALJ found that Dr. Moon's opinion appeared to rely on  
10 Plaintiff's unreliable self-report. Tr. 26. An ALJ is not required to accept a  
11 medical opinion that is "based to a large extent on a claimant's self-reports that  
12 have been properly discounted as incredible." *Tommasetti*, 533 F.3d at 1041. The  
13 record supports the ALJ's finding that Dr. Moon's opinion appears to rely on  
14 Plaintiff's unreliable self-report (*see infra*). For example, Plaintiff similarly  
15 testified that he is unable to work because he hears voices and they interfere with  
16 his concentration. Tr. 108-09. Dr. Moon accepted Plaintiff's statements; however,  
17 the daily activities Plaintiff reported to Dr. Moon are not consistent with this level  
18 of impairment, lending credence to the ALJ's finding that Dr. Moon must have  
19 relied on Plaintiff's unreliable self-reporting. For example, Plaintiff told Dr. Moon  
20 he got up at 6 a.m.; helped with household chores; walked for 30 minutes; napped

1 for an hour; watched television; went to appointments; and went to bed by nine  
2 p.m. Tr. 1718. This is inconsistent with Dr. Moon's assessed GAF of 40,  
3 indicating major impairment in several areas. Tr. 1718. Last, Dr. Moon stated  
4 Plaintiff "reported ongoing auditory hallucinations that interfere with his ability to  
5 sustain focus and remember things," further indicating her reliance on Plaintiff's  
6 unreliable report. This was another specific, legitimate reason to give limited  
7 weight to Dr. Moon's opinion. *Tommasetti*, 533 F.3d at 1041.

8 *3. Treating Nurses Campbell and Rutter and Physician's Assistant Spitler*

9 Next, Plaintiff faults the ALJ for failing to properly credit the opinions of  
10 three "other source" providers who treated Plaintiff's physical conditions. As  
11 noted, an ALJ need only provide germane reasons for rejecting the opinion of an  
12 "other" source. SSR 06-03p; 2006 WL 2329939 at \*2; *Molina*, 674 F.3d at 1111.

13 *a. Kelli Campbell, ARNP*

14 In January 2010, Plaintiff saw treatment provider Ms. Campbell for the first  
15 time, for complaints of back pain. Tr. 716-17. Ms. Campbell evaluated Plaintiff  
16 and diagnosed high blood pressure, diabetes, hyperlipidemia, and low back pain.  
17 Tr. 716. She noted Plaintiff complained of low back pain for thirty years. Tr. 716.  
18 At this initial appointment, Ms. Campbell assessed Plaintiff's limitations. Tr. 716-  
19 17. She opined that Plaintiff would miss four or more days of work per month,  
20 depending on the type of work performed; she noted Plaintiff had been sent for x-

1 rays and would be referred for physical therapy. Tr. 26-27 (citing Tr. 717). The  
2 ALJ assigned this opinion very little weight. Tr. 26.

3 First, the ALJ rejected this opinion because it was not adequately supported  
4 with objective medical findings. Tr. 26-27. An ALJ may discredit an opinion that  
5 is unsupported by objective medical findings. *Tonapetyan*, 242 F.3d at 1149. Ms.  
6 Campbell's opinion is not based on objective findings, since she states that  
7 Plaintiff was referred for further testing, including x-rays; in addition, no findings  
8 are included in or attached to her opinion. Tr. 717.

9 Second, the ALJ rejected Ms. Campbell's assessment because it appeared to  
10 rely on Plaintiff's unreliable self-report. Tr. 26-27. An ALJ may reject an opinion  
11 if it is based to a large extent on a claimant's self-reports that have been properly  
12 discounted as incredible. *Tommasetti*, 533 F.3d at 1041. Ms. Campbell stated that  
13 if Plaintiff had a job that did not require heavy lifting, prolonged sitting, or  
14 frequent bending, "*he feels* he would be able to work 40 hours/week." Tr. 717  
15 (emphasis added). By quoting Plaintiff, Ms. Campbell plainly relied on his  
16 unreliable self-report. Moreover, Ms. Campbell did not rely on any objective  
17 testing. The ALJ provided germane reasons for affording Ms. Campbell's opinion  
18 limited weight.

1 *b. Amelia Rutter, ARNP*

2 In October 2013, treatment provider Ms. Rutter evaluated Plaintiff. Tr.  
3 1990-91. Ms. Rutter diagnosed chronic low back pain, uncontrolled diabetes, type  
4 two, and “major depression with psychosis.” Tr. 1990. She opined that Plaintiff  
5 would need to lie down for one hour, three times a week, due to back pain. Tr.  
6 1990. First, the ALJ rejected Ms. Rutter’s opinion, because, like Ms. Campbell’s,  
7 it was unsupported by objective findings. Tr. 26-27 (citing Tr. 1990-91). An ALJ  
8 need not accept any opinion that is unsupported by objective findings.  
9 *Tonapetyan*, 242 F.3d at 1149. In addition to opining that Plaintiff would need to  
10 lie down for one hour, three times a week, due to back pain (citing Tr. 1990), Ms.  
11 Rutter also opined that because Plaintiff’s most recent x-ray was in 2010, further  
12 imaging was needed (citing Tr. 1990-1991); in addition, Plaintiff had been referred  
13 to physical therapy and needed to schedule an appointment (Tr. 1990). Tr. 26-27.  
14 The ALJ is correct that Ms. Rutter’s opinion is not accompanied by any findings.

15 Second, the ALJ found that Ms. Rutter’s opinion was based to a large extent  
16 on Plaintiff’s unreliable self-report. Tr. 26-27. An ALJ need not accept an opinion  
17 that appears based on a claimant’s self-reports that have been properly discounted  
18 as incredible. *Tommasetti*, 533 F.3d at 1041. Here, Ms. Rutter indicated that she  
19 had “just assumed care” of Plaintiff, and most of her information was from past  
20 records, Tr. 1991, indicating that the rest of her information must have come from

1 Plaintiff's unreliable self-report. The ALJ provided germane reasons for giving  
2 Ms. Rutter's opinion limited weight.

3 *c. Debbi Spitler, PAC*

4 In August 2013, treatment provider Ms. Spitler assessed a GAF of 44.<sup>16</sup> Tr.  
5 2055. The ALJ gave this opinion little weight. Tr. 27. Because Ms. Spitler is a  
6 physician's assistant, she is an "other source."

7 First, the ALJ found Ms. Spitler's assessed GAF of 44 was "an isolated  
8 finding in the record as a whole." Tr. 27 (citing Tr. 2055). An ALJ may reject an  
9 opinion that is unsupported by the record as a whole or by objective medical  
10 findings. *Batson*, 359 F.3d at 1195. This statement is largely, but not completely,  
11 accurate. In March of 2012, examining psychologist Dr. Moon assessed a GAF of  
12 40,<sup>17</sup> indicating even more serious symptoms or limitations. *See* Tr. 1718. Thus,

13 \_\_\_\_\_  
14 <sup>16</sup> A GAF of 44 indicates serious symptoms (e.g. suicidal ideation, severe  
15 obsessional rituals, frequent shoplifting) OR any serious impairment in social,  
16 occupational, or school functioning (e.g., no friends, unable to keep a job). *DSM-*  
17 *IV-TR*, 34.

18 <sup>17</sup> A GAF of 40 indicates some impairment in reality testing or communication  
19 (e.g., speech is at times illogical, obscure, or irrelevant) OR major impairment in  
20 several areas, such as work or school, family relations, judgment, thinking, or

1 the ALJ's first reason is not *entirely* supported; however, the ALJ's reasoning is  
2 correct because the record overall does not support such extreme limitations. For  
3 example, Ms. Spitler's assessed GAF of 44 is inconsistent with that of examining  
4 psychologist Dr. Dougherty, an acceptable source whose opinions are entitled to  
5 greater weight. *See* Tr. 635 (Dr. Dougherty assessed a GAF of 65, indicating only  
6 mild symptoms or limitations). As another example, the record overall shows that  
7 Plaintiff's reported functioning is inconsistent with more extreme limitations. Tr.  
8 25 (citing Tr. 384-90) (in April 2009, Plaintiff reported that he used public  
9 transportation, played light, non-contact sports daily, shopped, maintained a  
10 relationship with his girlfriend, handled money adequately, went to the park, and  
11 played video games).<sup>18</sup>

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13 mood (e.g., depressed man avoids friends, neglects family and is unable to work;  
14 child frequently beats up other children, is defiant at home, and is failing at  
15 school). *DSM-IV-TR*, 34.

16 <sup>18</sup> In addition, Plaintiff told Dr. Moon in March of 2012 his daily activities included  
17 helping with household chores (dishes, sweeping and mopping), walking for thirty  
18 minutes, and watching television; Plaintiff also reported he did not see himself  
19 working in the near future, "but stated that he may be able to do landscaping, a job  
20 that has limited contact with people." Tr. 1718.

1 Second, the ALJ rejected Ms. Spitler's opinion because it was not  
2 adequately supported with objective medical findings. Tr. 26. An ALJ may  
3 discredit an opinion that is unsupported by objective findings. *Batson*, 359 F.3d at  
4 1195. Here, Ms. Spitler assessed a GAF of 44, Tr. 2055, with no accompanying  
5 findings, other than a notation that until substance use is better managed, "it will  
6 likely be very difficult to get his psychotic symptoms under control." Tr. 2056.

7 Third, the ALJ gave Ms. Spitler's opinion very little weight because it  
8 appeared to be based on Plaintiff's unreliable self-report. Tr. 26-27. An ALJ is  
9 not required to accept a medical opinion that is largely based on a claimant's non-  
10 credible self-reports. *Tommasetti*, 533 F.3d at 1041. The lack of objective  
11 findings supports the ALJ's inference that Ms. Spitler relied on Plaintiff's  
12 unreliable self-report in assessing severe limitations, since there does not appear to  
13 be another source for her opinion. Tr. 26-27 (Tr. 2055). The ALJ provided  
14 germane reasons for rejecting the opinion.

15 *4. Dr. Eisenhower and Dr. Covell*

16 Plaintiff faults the ALJ for ignoring the opinions of reviewing physicians Dr.  
17 Eisenhower and Dr. Covell. ECF No. 14 at 14-17. An ALJ may reject a non-  
18 examining state agency physician's opinion if the opinions on which it is based  
19 have been properly rejected. *Downing v. Barnhart*, 167 F. App'x 652, 653 (9th  
20 Cir. 2006), 2006 WL 373050 (unpublished) (the ALJ further determined that the

1 state agency physician's opinion was unworthy of any persuasive value since it  
2 was based solely on the unsupported CCP's report).

3 *a. Dr. Eisenhauer*

4 The ALJ did not discuss the certification for Medicaid, Tr. 770, completed  
5 by reviewing psychologist R. Renee Eisenhauer, Ph.D., in February 2009. "[I]n  
6 interpreting the evidence and developing the record, the ALJ does not need to  
7 'discuss every piece of evidence.'" *Howard ex rel. Wolff v. Barnhart*, 341 F.3d  
8 1006, 1012 (9th Cir. 2003) (quoting *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir.  
9 1998)). An ALJ is not required to discuss evidence that "is neither significant nor  
10 probative." *Id.*

11 Dr. Eisenhauer noted Plaintiff's antipsychotic medication helped moderate  
12 symptoms and allowed for basic functioning, but he opined that Plaintiff is "at risk  
13 for decompensation without medication and with increased stress." Tr. 770. Dr.  
14 Eisenhauer opined that in light of these factors, Plaintiff *may* meet Listing  
15 12.03(C) (emphasis added). He approved Plaintiff for GAX (state benefits) based  
16 on Listing 12.03. *Id.* The certification indicates that Dr. Eisenhauer reviewed two  
17 unnamed evaluations, the first in March 2008. Tr. 770. This appears to be Mr.  
18 Clark's March 26, 2008 evaluation. Tr. 578. *Compare* Tr. 578 (Mr. Clark  
19 diagnosed psychosis disorder, NOS, somatoform disorder, NOS, and rule out  
20 schizophrenia, paranoid type); *with* Tr. 770 (Dr. Eisenhauer refers to same



1 diagnoses). The second evaluation appears to reference Mr. Anderson's  
2 September 23, 2008 evaluation, Tr. 734-39, since both Mr. Anderson and Dr.  
3 Eisenhower refer to Plaintiff's difficulty with tolerating frustration and anger.  
4 *Compare* Tr. 736 with Tr. 770. Because Dr. Eisenhower's opinion was based on  
5 Mr. Clark's opinion, Tr. 578, which the Court has already found the ALJ properly  
6 rejected, and on Mr. Anderson's opinion, which the court has also already  
7 determined was properly rejected, Dr. Eisenhower's reviewing opinion was not  
8 probative evidence. An ALJ may reject an opinion which is based on other  
9 opinions that the ALJ has properly rejected. *See Haberman v. Colvin*, 13-CV-  
10 05844-JRC, 2014 WL 3511124 at \*9 (W.D. Wash. July 14, 2014) ("Dr. Harmon's  
11 opinion was rejected properly as based on the lay opinions, which properly were  
12 rejected by the ALJ.").

13 Moreover, Dr. Eisenhower's provisional opinion that Plaintiff *may meet* a  
14 Listing (he opined that Plaintiff "is at risk for decompensation without medication  
15 and with increased stress"), Tr. 770, is simply not probative evidence that Plaintiff  
16 meets the criteria of a listed impairment. In addition, the effectiveness of  
17 medication and treatment is a relevant factor in determining the severity of a  
18 claimant's symptoms. 20 C.F.R. § 404.1529(c)(3); 416.929(c)(3); *see Warre v.*  
19 *Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (conditions  
20 effectively controlled with medication are not disabling for purposes of

1 determining eligibility). Consequently, the opinion that Plaintiff may  
2 decompensate without prescribed medication and with increased stress fails to  
3 establish that he meets a listed impairment.

4 As Dr. Eisenhower's opinion was neither significant nor probative, the ALJ  
5 was not required to discuss it. Plaintiff contends that the ALJ should have weighed  
6 the evidence differently and credited Dr. Eisenhower's opinion, but it is the role of  
7 the Commissioner, not this Court, to resolve conflicts in evidence. *Magallanes*,  
8 881 F.2d 747, 751 (9th Cir. 1989); *Richardson v. Perales*, 402 U.S. 389, 400  
9 (1971). If the evidence supports more than one rational interpretation, this Court  
10 may not substitute its judgment for that of the Commissioner. *Allen v. Heckler*,  
11 749 F.2d 577, 579 (9th Cir. 1984). If there is substantial evidence to support the  
12 administrative findings, or if there is conflicting evidence that will support a  
13 finding of either disability or nondisability, the Commissioner's finding is  
14 conclusive. *Sprague*, 812 F.2d at 1229-1230. The ALJ's assessment of the  
15 medical opinion evidence was supported by substantial evidence and must be  
16 sustained. *See Tackett*, 180 F.3d at 1098 (holding that if evidence reasonably  
17 supports the Commissioner's decision, the reviewing court must uphold the  
18 decision and may not substitute its own judgment).

1 *b. Dr. Covell*

2 In April 2012, Christmas Covell, Ph.D., completed a “Review of Evidence”  
3 for the state. Tr. 1905. The ALJ did not address this one page report. As noted,  
4 an ALJ need not address evidence that is neither significant nor probative. *See*  
5 *Vincent v. Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984).

6 According to reviewing psychologist Dr. Covell, the evidence she reviewed  
7 consisted of Dr. Moon’s opinion and Mr. Moen’s 2011 opinion. Tr. 1905.

8 Because this Court has already found that the ALJ properly rejected Dr. Moon’s  
9 and Mr. Moen’s opinions, Ms. Covell’s opinion was not probative. *See Haberman*,  
10 2014 WL 3511124 at \*9 (W.D. Wash. July 14, 2014) (no error in the ALJ’s failure  
11 to credit fully the opinions of Dr. Harmon, whose opinions were based on the lay  
12 examining source opinions which the ALJ was rejecting with germane rationale).

13 **B. Adverse Credibility Finding**

14 Next, Plaintiff faults the ALJ for failing to provide clear and convincing  
15 reasons for discrediting his symptom claims. ECF No. 14 at 17-20.

16 An ALJ engages in a two-step analysis to determine whether a claimant’s  
17 testimony regarding subjective pain or symptoms is credible. “First, the ALJ must  
18 determine whether there is objective medical evidence of an underlying  
19 impairment which could reasonably be expected to produce the pain or other  
20 symptoms alleged.” *Molina*, 674 F.3d at 1112 (internal quotation marks omitted).

1 “The claimant is not required to show that [his] impairment could reasonably be  
2 expected to cause the severity of the symptom [he] has alleged; [he] need only  
3 show that it could reasonably have caused some degree of the symptom.” *Vasquez*  
4 *v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

5 Second, “[i]f the claimant meets the first test and there is no evidence of  
6 malingering, the ALJ can only reject the claimant’s testimony about the severity of  
7 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the  
8 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal  
9 citations and quotations omitted). “General findings are insufficient; rather, the  
10 ALJ must identify what testimony is not credible and what evidence undermines  
11 the claimant’s complaints.” *Id.* (quoting *Lester*, 81 F.3d at 834); *Thomas v.*  
12 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he ALJ must make a credibility  
13 determination with findings sufficiently specific to permit the court to conclude  
14 that the ALJ did not arbitrarily discredit claimant’s testimony.”). “The clear and  
15 convincing [evidence] standard is the most demanding required in Social Security  
16 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*  
17 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

18 In making an adverse credibility determination, the ALJ may consider, *inter*  
19 *alia*, (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the  
20 claimant’s testimony or between his testimony and his conduct; (3) the claimant’s

1 daily living activities; (4) the claimant's work record; and (5) testimony from  
2 physicians or third parties concerning the nature, severity, and effect of the  
3 claimant's condition. *Thomas*, 278 F.3d at 958-59.

4 This Court finds the ALJ provided specific, clear, and convincing reasons  
5 for finding that Plaintiff's statements concerning the intensity, persistence, and  
6 limiting effects of his symptoms "are not entirely credible." Tr. 25.

7 *1. Lack of Objective Medical Evidence*

8 The ALJ found that the objective medical evidence did not support the  
9 degree of limitations alleged by Plaintiff. Tr. 25. Inconsistencies between a  
10 claimant's alleged limitations and medical evidence provide a permissible reason  
11 for discounting a claimant's credibility. Subjective testimony cannot be rejected  
12 solely because it is not corroborated by objective medical findings, but medical  
13 evidence is a relevant factor in determining the severity of a claimant's  
14 impairments. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *see also*  
15 *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005).

16 First, the ALJ found the objective evidence did not support Plaintiff's claim  
17 of allegedly disabling back pain. Tr. 25. For example, the ALJ found that  
18 although Plaintiff alleged disabling back pain, objective imaging showed only mild  
19 degenerative changes in Plaintiff's mid to lower thoracic spine, Tr. 1109, and  
20 moderate degenerative changes in his lumbar spine. Tr. 25 (citing Tr. 1304). The

1 ALJ found, as another example, that a musculoskeletal examination in October  
2 2007 was normal, with no tenderness nor joint deformity. Tr. 25 (citing Tr. 552).  
3 In May 2008, the ALJ found, Plaintiff was noted to ambulate independently. Tr.  
4 25 (citing Tr. 1080). The ALJ found, as a further example, that at an examination  
5 in October 2009, treatment provider Kelli Davidson, ARNP, opined that Plaintiff  
6 was not in any apparent distress. Tr. 25 (citing Tr. 505). With respect to diabetes,  
7 the ALJ found that in November 2007, Plaintiff had no significant diabetic  
8 retinopathy, Tr. 461, and in December 2011, Plaintiff was compliant with  
9 medication and had no diabetic-related foot ulcers or excessive thirst. Tr. 25  
10 (citing Tr. 1639). Moreover, the ALJ significantly credited reviewing doctor  
11 Norman Staley's 2009 opinion that Plaintiff was able to perform a range of  
12 medium work. Tr. 26 (citing Tr. 701-708).

13 The ALJ found these benign medical findings do not support Plaintiff's  
14 allegations that he experiences ongoing pain and needs to lay down throughout the  
15 day. Tr. 25 (citing Tr. 110) (Plaintiff testified that he experiences back pain and  
16 needs to lay down during the day for an hour). Such inconsistencies between  
17 Plaintiff's allegedly disabling physical limitations and the medical evidence  
18 provided a permissible reason for discounting Plaintiff's credibility. *See Thomas*,  
19 278 F.3d at 958-959.

1 Similarly, the ALJ found Plaintiff's alleged mental limitations were not  
2 supported by the medical evidence. Tr. 25. While an ALJ may not discredit a  
3 claimant's testimony based solely on a lack of corroborating objective evidence,  
4 the medical evidence is still a relevant factor in determining the severity of the  
5 claimant's pain and its disabling effects. *Rollins*, 261 F.3d at 857. For example,  
6 the ALJ found that in October 2007, treatment provider David Hibbs, ARNP,  
7 observed that Plaintiff did not exhibit any unusual anxiety or evidence of  
8 depression. Tr. 25 (citing Tr. 552). The ALJ further found that in May 2008,  
9 treatment provider Suzanne Rodriguez, MSW, opined Plaintiff was neither  
10 homicidal nor suicidal, he reported that medication has been helpful in managing  
11 his depression, and he was well groomed and dressed appropriately. Tr. 25 (citing  
12 Tr. 484). In addition, Ms. Rodriguez opined in May 2008 that Plaintiff's speech  
13 was coherent and spontaneous. Tr. 25 (citing Tr. 599). The ALJ further found  
14 that, in June 2008, Ms. Rodriguez opined that Plaintiff was alert and oriented times  
15 three. Tr. 25 (citing Tr. 482). Moreover, the ALJ found Dr. Dougherty opined in  
16 2009 that Plaintiff completed a 3-step command easily. Tr. 25 (citing Tr. 633).

17 The ALJ observed that this evidence does not support Plaintiff's alleged  
18 difficulty concentrating. Tr. 24 (citing Tr. 104 (Plaintiff testified that he has not  
19 been able to work since 2007 because he hears voices); Tr. 107 (Plaintiff testified  
20 that he cannot work because the voices "are intense"); Tr. 108-09 (Plaintiff

1 testified that with the voices, he loses concentration)). The ALJ further found  
2 these allegations were refuted by Plaintiff's own statements. Tr. 25 (citing Tr.  
3 386-90 (in his function report, Plaintiff indicated that he needed no reminders and  
4 followed both written and spoken instructions well)). The ALJ's reason is specific,  
5 clear and convincing.

## 6 *2. Daily Activities*

7 Next, the ALJ found that Plaintiff's daily activities were inconsistent with  
8 Plaintiff's allegedly disabling symptoms. Tr. 25. A claimant's reported daily  
9 activities can form the basis for an adverse credibility determination if they consist  
10 of activities that contradict the claimant's "other testimony" or if those activities  
11 are transferable to a work setting. *Orn*, 495 F.3d at 639; *see also Fair v. Bowen*,  
12 885 F.2d 597, 603 (9th Cir. 1989) (daily activities may be grounds for an adverse  
13 credibility finding "if a claimant is able to spend a substantial part of his day  
14 engaged in pursuits involving the performance of physical functions that are  
15 transferable to a work setting.")). Here, the ALJ found, for example, Plaintiff  
16 reported in April 2009 that he completed his personal care, performed simple  
17 chores, and played light, non-contact sports daily. Tr. 25 (citing Tr. 385-86, 388).  
18 In the same function report, Plaintiff reported that he lived in a shelter with others;  
19 went outside frequently; used public transportation; shopped in stores; regularly  
20 visited the post office, library, and doctors' offices; got along well with others;



1 handled stress very well, went to the park on occasion; and had a girlfriend. Tr.  
2 25<sup>19</sup> (citing Tr. 384-90). These activities are inconsistent with both Plaintiff's  
3 reported symptoms, *i.e.*, reported problems with concentration, and the activities  
4 indicate the ability to perform a range of activities transferable to a work setting.  
5 The ALJ reasonably relied on Plaintiff's daily activities that were inconsistent with  
6 his symptom claims as a clear and convincing reason to discredit Plaintiff's  
7 symptom claims.

8 *3. Lack of Compliance with Treatment*

9 Third, the ALJ found Plaintiff's lack of compliance with medical treatment  
10 diminished his credibility. Tr. 25. When weighing credibility, the ALJ may  
11 properly consider unexplained or inadequately explained failure to seek treatment  
12 or to follow a prescribed course of treatment. *Tommasetti*, 533 F.3d at 1039. The  
13 ALJ found, for example, that in November 2010, a treatment provider in the ER  
14 noted that Plaintiff's symptoms were "exacerbated by non-compliance." Tr. 25

15 \_\_\_\_\_  
16 <sup>19</sup> The ALJ found Plaintiff also reported that he was able to adequately handle  
17 money; he watched movies and played card games daily; Plaintiff read the  
18 newspaper; played video games; possessed basic computer skills; followed both  
19 written and spoken instructions well; needed no reminders; and finished what he  
20 started. Tr. 21, 25 (citing Tr. 386-90).

1 (citing Tr. 1015).<sup>20</sup> The ALJ further found Plaintiff was terminated from treatment  
2 for using methamphetamine and thereafter failing to contact the treatment agency.  
3 Tr. 21, 25 (citing Tr. 1914) (relapse); Tr. 1917 (termination from treatment). There  
4 are many other records, not cited by the ALJ, that further demonstrate Plaintiff's  
5 non-compliance. *See, e.g.*, Tr. 464-66 (Plaintiff was hospitalized in October 2008  
6 for gastrointestinal bleeding; he admitted drinking); Tr. 672 (in July 2009, Plaintiff  
7 was hospitalized for abdominal pain; the diagnosis included alcoholism; Plaintiff  
8 admitted he knew that alcohol was "bad for his diabetes mellitus."). The ALJ  
9 provided another specific, clear and convincing reason supported by the evidence.  
10 In sum, despite Plaintiff's arguments to the contrary, the ALJ provided several  
11 specific, clear, and convincing reasons for rejecting Plaintiff's testimony. *See*  
12 *Ghanim*, 763 F.3d at 1163.

13  
14  
15  
16 <sup>20</sup> *See, e.g.*, Tr. 564 (in July 2008, Dr. Rodenberger noted an unexplained six month  
17 treatment gap); Tr. 721, 723 (in February 2010, Plaintiff told Ms. Vaagen that he  
18 smoked cannabis once in a while and was not currently receiving mental health  
19 treatment services). These records are not cited by the ALJ but further support her  
20 reasoning.

1 **CONCLUSION**

2 After review, the Court finds that the ALJ's decision is supported by  
3 substantial evidence and free of harmful legal error.

4 **IT IS ORDERED:**

5 1. Plaintiff's motion for summary judgment (ECF No. 14) is **DENIED**.

6 2. Defendant's motion for summary judgment (ECF No. 17) is **GRANTED**.

7 The District Court Executive is directed to file this Order, enter **Judgment**  
8 **for Defendant**, provide copies to counsel, and **CLOSE** the file.

9 DATED this 27th day of March, 2017.

10 S/ Mary K. Dimke  
11 MARY K. DIMKE  
U.S. MAGISTRATE JUDGE